

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION, CINCINNATI**

Dennis Allen, et al.	:	
Plaintiffs	:	Case No. C-1-01-159
v.	:	Judge Herman S. Weber
Leonard Kristal	:	Magistrate Judge Timothy S. Hogan
and	:	
John Crary	:	PLAINTIFFS RESPONSE TO
Defendant	:	DEFENDANT JOHN L. CRARY S
	:	MOTION FOR SUMMARY JUDGMENT
	:	
	:	and
	:	PLAINTIFFS CROSS-MOTION FOR
	:	SUMMARY JUDGMENT AGAINST
	:	DEFENDANT JOHN L. CRARY

Plaintiffs Dennis Allen, et al. (Plaintiffs) submit their response to Defendant John L. Crary s (Crary) motion for summary judgment, and move this Court pursuant to Federal Rule of Civil Procedure 56 for summary judgment against Defendant John L. Crary. No genuine issues of material fact exist concerning Crary s status as a fiduciary, his conduct as alleged in Plaintiffs Amended Complaint, and his failure to comply with the duties imposed on fiduciaries under ERISA. For these reasons, Plaintiffs request the Court enter judgment against Crary and order relief as more fully described in the accompanying memorandum in support.

Date

Respectfully submitted,

/s/ David M. Cook

David M. Cook (0023469)
Stephen A. Simon (0068268)
David M. Cook, LLC
22 West Ninth Street
Cincinnati, Ohio 45202
Phone: (513) 721-7500
Fax: (513) 721-1178

ATTORNEYS FOR PLAINTIFFS

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been served on the following parties by first class mail, postage prepaid, on November 10, 2003, via U.S. regular mail, postage prepaid, upon the following:

Leonard Kristal
107 Diablo Drive
Kentfield, California 94904

Stephen R. Felson
617 Vine Street
Suite 1401
Cincinnati, Ohio 45202
Trial Attorney For Defendant Crary

Paul D. Marotta
Christopher D. Denny
Jennifer Chen
The Corporate Law Group
500 Airport Blvd., Suite 120
Burlingame, CA 94010
Of Counsel for Defendant Crary__

s/ David M. Cook

ATTORNEY FOR PLAINTIFFS